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ROBIN TAN PANG HENG

v.

KETUA PENGARAH KESATUAN SEKERJA MALAYSIA
& ANOR

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FEDERAL COURT, PUTRAJAYA
HASHIM YUSOFF FCJ
HELILIAH MOHD YUSOF FCJ
SURIYADI HALIM OMAR JCA

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[CIVIL APPEAL NO: 01(f)-8-2009 (P)]
1 SEPTEMBER 2010

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ADMINISTRATIVE LAW: *Judicial review - Registration of trade union - Appeal against trade union registration by employer - Whether employer obliged to follow specific procedure under s. 71A of Trade Unions Act 1959 to appeal - Whether specific procedure mandatory - Whether employer able to apply for declaratory relief by way of judicial review before exhausting specific appeal procedure - Trade Unions Act 1959, ss. 12(1), 71A*

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LABOUR LAW: *Trade union - Registration - Appeal against trade union registration by employer - Whether provisions of Trade Unions Act 1959 applicable to employer - Whether employer obliged to follow specific procedure to appeal to Minister - Whether specific procedure mandatory - Whether employer able to apply for declaratory relief by way of judicial review before exhausting specific appeal procedure - Trade Unions Act 1959, ss. 12(1), 71A*

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The 2nd respondent was registered by the 1st respondent under s. 12(1) of the Trade Unions Act 1959 ('Act 262'), as a trade union representing workmen employed by the Penang Turf Club ('the appellant'). The appellant refused to recognize the 2nd respondent. It then commenced an action in the High Court through its public officer to *inter alia* declare the 2nd respondent's registration null and void and to revoke the 1st respondent's certificate of registration. In the High Court, the first respondent's counsel raised a preliminary objection that the appellant was wrong in commencing the action without first exhausting the remedy available under s. 71A of Act 262. The High Court allowed the objection and dismissed the action. The High Court's decision was upheld on appeal to the Court of Appeal. The appellant obtained leave to refer two questions

to the Federal Court, to wit: (a) whether s. 71A of Act 262 applied to an employer; and (b) whether the existence of an alternative appeal procedure or remedy would bar judicial review or declaratory relief. A

Held (dismissing the appellant's appeal with costs)

Per Heliliah Mohd Yusof FCJ delivering the judgment of the court: B

- (1) It cannot be asserted that there is no nexus between the Trade Unions Act 1959 ('Act 262') and the Industrial Relations Act 1967 (Act 177). If the object of forming a trade union, *inter alia*, is to regulate relations between workmen and employers, then it cannot be accepted that Act 262 is not applicable to an employer, although the employer is not involved in the process of registration. The very claim for recognition has an antecedent process of the registration of a trade union. The law governing the relationship of employer and workmen for the purposes of a trade union activity is therefore found in both Acts 177 and 262. There is a nexus between the two Acts. The word 'any person' in s. 71A of Act 262 extends and applies to an employer. The first question answered affirmatively. *Pinner v. Everette* (foll); *Barnes v. Jarvis* (foll). (paras 8, 11, 12, 13, 14 & 15) C D E
- (2) Section 71A of Act 262 provides a remedial mechanism that is a specific procedure for an appeal to the Minister. Act 262 has established a second tier. Since legislation has identified a specific procedure through an appeal to the Minister, any employer wishing to refute union recognition has to resort to the mandatory established by statute. Courts are not authorized to interfere since the statutory right is not formal but mandatory. The statutory right has to be exhausted. (paras 16 & 17) F G
- (3) In the instant case, the appellant by praying for declaratory relief was in effect resorting to a procedure akin to judicial review. No manifest reasons could be discerned for invoking outrightly the exercise of the discretionary powers of the court. There were no special circumstances prevailing on the facts of the case to warrant the court to exercise its jurisdiction. There appeared to be a pre-emptive step resorted to as a substitute to a practical procedure laid down within the framework of the H I

- A trade union legislation. The appellant had failed to establish in what way the statutory powers of the 2nd respondent had been exceeded. The appellant had sought to bypass the appointed tribunal by seeking a declaration instead of following the prescribed statutory procedure. The second question answered affirmatively. *Majlis Perbandaran Pulau Pinang v. Syarikat Berkerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* (dist); *Electrical Industry Employees Union v. Registrar of Trade Union* (foll). (paras 18, 19, 20, 21, 22, 23, 24 & 25)
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C ***Bahasa Malaysia Translation Of Headnotes***

- Responden kedua telah didaftarkan oleh responden pertama di bawah s. 12(1) Akta Kesatuan Sekerja ('Akta 262'), sebagai kesatuan sekerja yang mewakili pekerja yang bekerja dengan Penang Turf Club ('perayu'). Perayu enggan mengiktiraf responden kedua. Perayu memulakan tindakan dalam Mahkamah Tinggi melalui pegawai amnya untuk antara lain membuat deklarasi pendaftaran responden kedua tidak sah dan terbatal dan untuk membatalkan sijil pendaftaran responden pertama. Di dalam Mahkamah Tinggi, peguam responden pertama telah membangkitkan bantahan awalan bahawa perayu telah salah apabila memulakan tindakan tanpa menggunakan remedi yang tersedia di bawah s. 71A Akta 262. Mahkamah Tinggi membenarkan bantahan tersebut dan menolak tindakan itu. Keputusan Mahkamah Tinggi telah diesahkan oleh Mahkamah Rayuan. Perayu telah memperolehi kebenaran untuk merujuk dua persoalan kepada Mahkamah Persekutuan, iaitu: (a) sama ada s. 71A Akta 262 digunapakai pada majikan; dan (b) sama ada kewujudan prosedur rayuan atau remedi alternatif melarang kajian semula kehakiman atau relief pengisytiharan.
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G **Diputuskan (menolak rayuan perayu dengan kos)
Oleh Heliliah Mohd Yusof HMP menyampaikan penghakiman mahkamah:**

- (1) Tidak boleh ditegaskan bahawa tidak terdapat nexus di antara Akta Kesatuan Sekerja ('Akta 262') dan Akta Perhubungan Perusahaan (Akta 177). Jikalau matlamat membentuk kesatuan sekerja, antara lain, adalah untuk kawal hubungan di antara pekerja dan majikan, ia tidak boleh diterima bahawa Akta 262 tidak digunapakai kepada majikan, walaupun majikan tidak terlibat di dalam proses pendaftaran. Tuntutan untuk pengiktirafan mempunyai proses sebelumnya pendaftaran sebuah kesatuan sekerja. Undang-undang yang mentadbir perhubungan
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- di antara majikan dan pekerja untuk tujuan aktiviti-aktiviti kesatuan sekerja terdapat di dalam Akta 262 dan Akta 177. Perkataan 'any person' di dalam s. 71A Akta 262 menjangkau dan berkaitan dengan majikan. Persoalan pertama dijawab secara afirmatif. *Pinner v. Everette* (diikuti); *Barnes v. Jarvis* (diikuti). A
- (2) Seksyen 71A Akta 262 membekalkan mekanisme remedi iaitu prosedur spesifik untuk rayuan kepada Menteri. Akta 262 telah menubuhkan satu peringkat kedua. Oleh kerana perundangan telah mengenal satu prosedur spesifik melalui satu rayuan kepada Menteri, pekerja yang ingin menyangkal pengiktirafan kesatuan perlu mengambil jalan keluar dengan mandatori yang ditubuhkan oleh statut. Mahkamah tidak harus campurtangan kerana hak statutori adalah tidak rasmi tetapi mandatori. Hak statutori perlu digunakan sepenuhnya. B
- (3) Di dalam kes ini, perayu dengan memohon untuk relif deklaratori pada dasarnya mengambil jalan keluar dengan satu prosedur yang sama seperti semakan semula kehakiman. Tiada sebab-sebab jelas boleh dianggap dalam penggunaan secara terbuka pelaksanaan kuasa-kuasa budibicara mahkamah. Tidak terdapat hak keadaan khas di dalam fakta-fakta kes untuk menjamin mahkamah melaksanakan bidangkuasanya. Terdapat langkah pre-emptive yang digunakan sebagai pengganti prosedur praktikal yang tersedia di dalam rangka kerja perundangan kesatuan sekerja. Perayu telah gagal menunjukkan dari segi cara apa kuasa statutori responden kedua telah dilampaui. Perayu telah cuba melangkau tribunal dilantik dengan memohon deklarasasi dan tidak mengikut prosedur berkanun yang ditetapkan. Persoalan kedua dijawab secara afirmatif. *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* (dibezakan); *Electrical Industry Employees Union v. Registrar of Trade Union* (diikuti). C
- Case(s) referred to:**
- Barnes v. Jarvis* [1953] 1 WLR 649 (*refd*)
- Electrical Industry Employees Union v. Registrar of Trade Unions & Anor* [1975] 1 LNS 34 FC (*fol*)
- In Re Preston* [1985] 1 AC 835 (*refd*)
- Majlis Perbandaran Pulau Pinang v. Syarikat Berkerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 CLJ 65 FC (*dist*)
- Pahang South Union Omnibus Co Bhd v. The Minister of Labour & Manpower & Anor* [1981] CLJ 83; [1981] CLJ (Rep) 74 FC (*refd*)
- Pinner v. Everette* [1969] 1 WLR 1266 (*refd*)
- R v. Epping and Harlow General Commissioner* [1983] 3 All ER 257 (*refd*)
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A Legislation referred to:

Federal Constitution, art. 10(1)(c)
Industrial Relations Act 1967, s. 9(2), (5)
Trade Unions Act 1959, ss. 12(1), 71A(1)(b)

B *For the appellant - Dato' Dr Cyrus Das (Steven Thiru & Faisal Moideen with him); M/s Shook Lin & Bok*

For the 1st respondent - Nizam Zakaria (Shamsul Bolhassan & Suzana Atan with him) SFCs; AG's Chambers

For the 2nd respondent - Subramanian Palayah; M/s Hassan Subra & Assocs

C *[Appeal from Court of Appeal; Civil Appeal No: P-01-72-2001]*

[Editor's note: For the Court of Appeal judgment, please see Robin Tan Pang Heng Abdullah (Mendakwa Sebagai Pegawai Awam Penang Turf Club) v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [2010] 5 CLJ 574

D *Reported by Andrew Christopher Simon*

JUDGMENT

E Heliliah Mohd Yusof FCJ:

[1] In this appeal, the two questions posed to this court are:

(i) "Whether s. 71A of Trade Unions Act 1959 (Act 262) applies to the employer?"; and

F (ii) "Whether the existence of a statutory appeal procedure/ alternative remedy is a bar to judicial review or declaratory reliefs?".

G **[2]** The facts as elucidated before the Court of Appeal are as follows. The Penang Turf Club (the appellant as the plaintiff), through one of its public officers initiated action in the High Court over the registration of the 2nd respondent under s. 12(1) of the Trade Unions Act 1959 (Act 262) as a trade union of workmen by the 1st respondent. The 1st respondent is the Director General of Trade Unions ("the DGTU") whilst the 2nd respondent is the Penang Turf Club Race Day Worker's Union ("the workers union"). The 2nd respondent was registered under s. 12(1) of the Act 262. The appellant refused to give recognition to the 2nd respondent as a trade union because it was of the view that the 2nd respondent represented casual workers who in law could not form a trade union.

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[3] This appeal pertains to statutory interpretation as well as an exercise of discretion whereby the High Court judge has dismissed a claim on the basis of a preliminary objection raised by the learned counsel for the 1st respondent that the appellant was wrong in commencing this suit without first exhausting the remedy available under s. 71A of Act 262. The decision of the High Court has been affirmed by the Court of Appeal.

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[4] The appellant in the High Court has sought a declaration that the registration of the 2nd defendant (the 2nd respondent) by the 1st defendant (1st respondent) on 22 November 1994 pursuant to s. 12(1) of the Act is null and void and a consequential order that the certificate of registration issued by the 1st respondent be revoked and cancelled.

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[5] We are reminded here not to dwell on the merits of the claim of the appellant in the suit before the High Court since the questions before us rest on the preliminary objection.

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[6] In so far as the first question is posed before us we are concerned with the issue of the applicability of s. 71A. The first question is predicated on the premise that Act 262 has no relevance whatsoever to an employer. It is asserted that the process of registration does not involve an employer since there is no requirement of law that an employer is to be consulted or informed of the intended formation of a trade union that is likely to represent his employees. It is further contended that the employer is only brought into the picture when the newly registered trade union serves a claim for recognition pursuant to s. 9(2) of the Industrial Relations Act 1967 (Act 177).

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[7] It is noted that while Acts 177 and 262 are separate legislation the ensuing question is whether on the issue of a trade union, the employer is totally unconnected when on the facts of this appeal a dispute has arisen on account of the refusal of recognition. Learned counsel for the appellant has urged upon us that the appellant does not fall within the scope of s. 71A which refers to the availability of an appellate process. This entails an appraisal of various provisions of the relevant legislation. Reference is first made to Act 262 the specific provisions of which are:

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- A Trade Unions Act 1959
- Interpretation
2. (1) In this Act, unless the context otherwise requires or it is otherwise expressly provided:
- B “employer” means any person or body of persons, whether corporate or unincorporate, who employs a workman, and includes the Government and any statutory authority;
- C “trade dispute” means any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen;
- D “trade union” or “union” means any association or combination of workmen or employers, being workmen whose place of work is in Peninsular Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in Peninsular Malaysia, Sabah or Sarawak, as the case may be:
- E ...
- (c) having among its objects one or more of the following objects:
- F (i) the regulation of relations between workmen and employers for the purposes of promoting good industrial relations between workmen and employers, improving the working conditions of workmen or enhancing their economic and social status, or increasing productivity;
- G (ia) the regulation of relations between workmen and workmen, or between employers and employers;
- ...
- Section 12(1)
- H 12. (1) The Director General may, upon receiving any application under section 10, and subject to this section, register the trade union in the prescribed manner.
- Appeal to Minister
- I 71A. (1) Any person who is dissatisfied with any opinion, order, declaration, refusal, cancellation, withdrawal, direction or decision, as the case may be, given, made or effected by the Director General under any of the following provisions:

- ... A
- (b) section 12;
- ... B
- may, within thirty days from the date of the opinion, order, declaration, refusal, cancellation, withdrawal, direction or decision of the Director General, appeal against the same to the Minister, in such manner as may be prescribed by regulations.
- ... C
- (3) The Minister may, after considering any such appeal, give such decision thereon as he deems just and proper.
- (4) A direction or decision of the Minister under this section shall be final and conclusive. D
- [8] A perusal of the abovementioned provisions indicates that in the definition of a trade union there is envisaged that one of the objects of a Trade Union is the regulation of relations between “workmen and employers” for the purposes of promoting good relations. In this case, pursuant to an application, the Director General in allowing the 2nd respondent to be registered as a trade union has made a “decision” pursuant to an exercise of statutory powers. E
- [9] The questions posed are questions of law. In this appeal it has been disclosed that on 23 December 1994, the 2nd respondent had forwarded to the appellant a notice of claim for recognition together with a certificate of registration dated 22 November 1994 issued by the 1st respondent. A letter dated 13 February 1995 was a reply by the appellant stating that it was unable to accord recognition to the 2nd defendant. The claim for recognition is provided by legislation to be lodged in accordance with s. 9(2) of Act 177 that states: F
- A trade union of workmen may serve on an employer or on a trade union of employers in writing in the prescribed form a claim for recognition in respect of the workmen or any class of workmen employed by such employer or by the member of such trade union of employers. G H
- [10] According to the evidence before us there is a notice of claim for recognition in Form A dated 15 December 1994 that evoked a response dated 13 February 1995 from the appellant where the non-recognition was registered. I

- A [11] At this juncture it would be appropriate to observe in so far as the legislation is concerned it cannot be categorically asserted that there is no nexus between the legislation. If the object of forming a trade union, *inter alia*, is to regulate relations between workmen and employers, then it cannot therefore be accepted
B unreservedly that Act 262 is not applicable to an employer.

[12] In *Pinner v. Everett* [1969] 1 WLR 1266, Lord Reid observed:

- C In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase.

- D [13] Related to the issue of statutory interpretation is the comment of Lord Goddard CJ in *Barnes v. Jarvis* [1953] 1 WLR 649, 652:

A certain amount of common sense (must be applied) in construing statutes.

- E [14] Applying the above tenets of interpretation to the legislation [Act 262] in this appeal, while the employer is not involved in the process of registration of a trade union it cannot be said however that it has no application whatsoever to an employer. The very
F claim for recognition has an antecedent process of the registration of a trade union. The current state of law governing the relationship of employer and workmen for the purposes of a trade union activity is therefore found in both Acts 177 and 262. There is a nexus between the two Acts. Perhaps the time is ripe for legislators to consider consolidating the two legislation, as has been evidenced by
G the inception of the Trade Union and Labour Relations (Consolidation) Act 1992 in the United Kingdom.

- H [15] Hence the word “any person” as found in s. 71A does extend and apply to an employer. In this appeal we have an employer that is challenging the very act of registration of the trade union. The first question is therefore to be answered in the affirmative.

- I [16] The second question could better be described as a consequence of the first question. Section 71A has provided a remedial mechanism within the framework of the trade union legislation, that is a specific procedure whereby an appeal lies to the Minister. The second question relates to another matter, that is

since s. 71A(1) is applicable to an employer does it still permit the employer to have an option not to appeal, and additionally, instead have recourse to a court of law in order to challenge the registration. The declaratory orders sought by the appellant would have the effect of negating the decision of the 1st respondent. By praying for the declaratory orders the appellant is in effect appealing against the decision of the 1st respondent while a specific procedure has been laid down in the Act 262. By statute a second tier has been established whereby an appeal lies to the Minister. The word used in s. 71A(1)(b) is “may”. In construing the word “may” generally, it could be contended that the word is permissive in relation to the person who is given the right to appeal in the sense that it gives the person a choice to prefer an appeal against the decision of the Registrar or not to. But in relation to the person who is to be affected by the appeal we do not see this as directory. The declaratory orders sought for seek to reverse the decision of the Registrar. Hence in that sense if an employer wishes to refute recognition then it is the mandatory procedure that is laid down that has to be resorted to for the legislation has identified the specific procedure whereby any person who is dissatisfied is to seek further recourse with the Minister if that person wishes to negate the decision of the Registrar.

[17] In our opinion the legislation by stipulating that the decision of the Minister is to be final is itself indicative that when there is already stipulated a second tier identified in the legislation, courts are not authorised to interfere for the statutory right that has accrued is not purely formal but mandatory. In other words the statutory right has to be exhausted.

[18] In filing this action, the appellant is seeking the court’s intervention in what could be described as the intermediate stage.

[19] Certain observations may be made. In challenging the validity of the registration of the 2nd respondent, the appellant is disputing, *inter alia*, questions of facts. Those facts are the very facts which the 1st respondent must have taken into consideration in arriving at a decision to register the 2nd respondent. The basis upon which the existence of the 2nd respondent as a trade union is being challenged is the nature of the relationship between the members of the trade union and the appellant and as asserted in the statement of claim “the status of the workers”. There is therefore here an assertion of the status of the members of the trade union in relation to the appellant that becomes the main cause of seeking the declaratory orders.

A [20] It is relevant for the purpose of this point to refer to the
decision in *Pahang South Union Omnibus Co Bhd v. The Minister of*
Labour & Manpower & Anor [1981] CLJ 83; [1981] CLJ (Rep) 74.
The judgment of the Federal Court then is instructive, despite the
fact that in that case, the application made was for a *certiorari* to
B quash the decision of a Minister in the exercise of Ministerial
powers of the Minister pursuant to s. 9(5) of the Industrial
Relations Act 1967 as it was, prior to amendments made in 1980.
Abdoolcader J (as he then was) stated:

C ... An appeal is the creature of statute and will only lie if a statute
gives such a right and then only within the limits which the statute
giving the right stipulates (*In re Bowman* (at page 633 per Swift J.);
(*Ohene Moore v. Akeseh Tayee* (at page 75 per Lord Atkin)). No
appeal lies from a decision of the 1st respondent under section 9(5).
When no appeal lies from a decision, judicial review cannot be
D resorted to as an *alter modus* for an appeal by way of circumventing
or repairing that omission. The scope of judicial review is narrower
and limited and it would be useful and apposite to reproduce in
extenso the delightfully lucid and comprehensive exposition on this
aspect by Lord Denning M.R., in *General Electric Co. Ltd. v. Price*
E *Commission* (at page 12) when he stresses the supervisory nature of
the jurisdiction:

Parliament often entrusts the decision of a matter to a
specified person or body, without providing for any appeal.
It may be a judicial decision, or a quasi-judicial decision, or
F an administrative decision. Sometimes Parliament says its
decision is to be final. At other times it says nothing about it.
In all these cases the courts will not themselves take the
place of the body to whom Parliament has entrusted the
decision. The courts will not themselves make the original
findings of fact. They will not themselves embark on a re-
G hearing of the matter: see *Healey v. Minister of Health*. But,
nevertheless, the courts will, if called upon, act in a
supervisory capacity. They will see that the decision-making
body acts fairly: see *In re H.K. (An Infant) and Reg. v.*
Gaming Board for Great Britain, Ex parte Benaim and Khaida.
H The courts will ensure that the body acts in accordance with
the law. If a question arises on the interpretation of words,
the courts will decide it by declaring what is the correct
interpretation: see *Punton v. Ministry of Pensions and National*
Insurance. And if the decision-making body was gone wrong
in its interpretation, they can set its order aside: see *Ashbridge*
I *Investments Ltd. v. Minister of Housing and Local Government*.
(I know of some expressions to the contrary, but they are not
correct). If the decision-making body is influenced by

considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere: see *Padfield v. Minister of Agriculture, Fisheries and Food*. If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable that a reasonable person would not have come to it - then again the courts will interfere: see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*. If the decision-making body goes outside its powers, or misconstrues the extent of its powers, then, too, the courts can interfere: see *Anisminic Ltd. v. Foreign Compensation Commission*. And, of course, if the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision will be set aside: see *Sydney Municipal Council v. Campbell*. In exercising these powers, the courts will take into account any reason which the body may give for its decision. If it gives no reason - in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly: see *Padfield's* case.

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We would further refer to the judgment of this court in *Minister of Labour and Manpower & Anor. v. Paterson Candy (Malaysia) Sdn. Bhd.* which also involved a trade union recognition dispute where the Registrar of Trade Unions made the relevant inquiry and would advert to and apply the test and approach laid down therein (at page 124) and again that set out in the judgment of this court in *National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower* (at page 191). The very point in issue in these proceedings in fact arose in *Foh Hup Omnibus Co. Berhad v. Minister of Labour and Manpower & Anor.* when this court held that the 1st respondent had a complete discretion as to the manner in which he was to act in settling a dispute as to recognition of a trade union and that there had been no breach of the rules of natural justice.

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[21] Again, it is also clear that that case was a proper case of judicial review for there was an allegation that a membership check carried out by the Registrar of Trade Union was improper, wrong and contrary to the principles of natural justice. In the appeal before us, the appellant in praying for declaratory orders is in effect resorting to a procedure that is akin to judicial review. No manifest reasons may be discerned for invoking outrightly the exercise of the discretionary powers of the court. The ingenuity of circumventing the provisions of the available statutory procedure is further aggravated by two facts. Firstly, as has been pointed out by the

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A learned High Court judge, it took six years before the action finally proceeded where it was also converted from an action that commenced as an originating summons to a writ action. Secondly, the trial judge had observed that no objection was lodged at the time the preliminary objection was raised. Courts should be vigilant in curbing the conduct of any party that resiles from a position that it has already taken. The Court of Appeal itself has observed that there are no special circumstances prevailing on the facts of this case to warrant the court to exercise its jurisdiction.

C [22] In effect while two questions of law may have been posed to the court essentially there are also series of facts involved and which have not been materially considered by the courts below. Consequently in this appeal this court will not embark on a course of examining facts which have not been duly ventilated. By seeking the declaratory orders this court is being asked to substitute its decision for that of the Registrar of Trade Unions. In addition this court at this stage is also not being asked to pronounce whether a Ministerial decision under s. 71A of Act 262 would still preclude the court from exercising its discretion. Instead there appears to be a preemptive step resorted to as a substitute to a practical procedure laid down within the framework of the trade union legislation. We agree with the finding of the Court of Appeal that the appellant has failed to establish in what way the statutory powers of the 2nd respondent have been exceeded. The appellant requested the High Court to invoke its residual powers and as succinctly stated by Sir John Donaldson MR in *R v. Epping and Harlow General Commissioner* [1983] 3 All ER 257:

G But it is a cardinal principle that, save in the most exceptional circumstances, that jurisdiction will not be exercised where other remedies were available and have not been used.

H [23] Even if the process invoked here had indeed been the process of judicial review in the true sense, this court will only be exercising a supervisory and not an appellate function. Lord Templeman in his speech in *In Re Preston* [1985] 1 AC 835 observed:

Judicial review process should not be allowed to supplant the normal statutory appeal procedure.

I [24] It is to be noted that the appellant is seeking to oppose a right recognised pursuant to art. 10(1)(c) of the Federal Constitution and the mode of challenge to it has been provided by

statute. The reliance upon the exhortation laid down in *Majlis Perbandaran Pulau Pinang v. Syarikat Berkerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 CLJ 65 is clearly inapplicable on the facts of this appeal. In effect it is also clear that the appellant in this appeal, seeks in the words of Wan Suleiman FJ (as he then was) in *Electrical Industry Employees Union v. Registrar of Trade Unions & Anor* [1975] 1 LNS 34:

to bypass the appointed tribunal by seeking a declaration instead of following the prescribed statutory procedure.

[25] In the final analysis, in the absence of exceptional or appropriate circumstances the answer to the second question is in the affirmative. This appeal is therefore dismissed with costs and the deposit goes to the respondents.

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